IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8610 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHARAT PETROLEUM CORPORATION LTD

Versus

REMESHCHANDRA HIRALAL PRAJAPATI

Appearance:

1. Special Civil Application No. 8610 of 1988

MR GN SHAH for Petitioner

MS MINOO A SHAH for Petitioner

MR MK VAKHARIA for MR TUSHAR MEHTA for Respondent

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 13/02/2003

ORAL JUDGEMENT

In instant petition, which is filed under Article

227 of the Constitution, the petitioner i.e. Bharat Petroleum Corporation Limited has challenged legality of order and award dated September 27, 1988, rendered by the Labour Court No.2, Vadodara, in Reference (LCV) No.397/80 by which the petitioner is directed to reinstate the respondent in service with 50% back wages.

2. The respondent was employed as a Cleaner, on temporary basis, by the petitioner vide order dated May 23, 1978, for six months and the said period was extended from time to time. The respondent was directed to perform duties as Cleaner on Tanker bearing Registration No.GTK-4036. On December 31, 1979, the tanker, which was filled up with petrol, had left Koyali for Cambay. The case of the Corporation was that on way to Cambay, the driver and the respondent had permitted a third man called Chimanbhai to sit in the cabin of the tanker with an oblique motive of committing theft of petrol. According to the petitioner, the tanker was stopped on the way near Dharmaj and that petrol was taken out of the tanker near the depot of contractor of the petitioner, who had employed Chimanbhai. It is the further case of the petitioner that Chimanbhai was holding a lantern in his hands and that while resealing the valve of the tanker, the tanker had caught fire, as a result of which Chimanbhai had received severe burn injuries and ultimately succumbed to the same, whereas the tanker was completely destroyed due to fire. What was maintained by the petitioner-Corporation was that the whole operation i.e. taking out of petrol from the tanker and the tanker catching fire, was witnessed by one Girishbhai Jashbhai Patel of Dharmaj, who was returning home on scooter from Vadodara at about 2.00 A.M. On receipt of information, the then Distribution Manager of the petitioner i.e. Shri Pravinbhai Mohanlal Tripathi had made inquiry on the spot and recorded statements of the driver as well as the respondent, wherein the respondent had admitted that while taking out petrol for sale from the tanker, fire had taken place because of the lantern. The driver of the tanker and the respondent were suspended from service by an order dated September 29, 1979, and both of them were served with chargesheet dated November 6, 1979. It may be stated that the driver and the respondent were also prosecuted for the offences punishable under Sections 379, 511, 427 read with Section 114 of the Indian Penal Code, but, were acquitted in Criminal Case No. 2629/1979 on the concession made by the learned Additional Public Prosecutor to the effect that there was no eye witness to the incident.

3. Mr.K.U.Bhandarkar was appointed as Inquiry Officer by the petitioner to enquire into the charges levelled against the respondent; whereas one Mr.Khanvilkar was appointed as Presenting Officer. Two witnesses i.e.Mr.Girishbhai Jashbhai Patel and Mr.Nadkarni were examined on behalf of the petitioner during the course of departmental inquiry to substantiate the charges levelled against the respondent. On appreciation of evidence adduced before the Inquiry Officer, the Inquiry Officer concluded that the charges levelled against the respondent were proved, and submitted his report dated December 11, 1979 to the competent authority. The competent authority dismissed the respondent from service by an order dated March 12, 1980.

4. The respondent was of the opinion that the order dismissing him from service was illegal. He, therefore, raised an industrial dispute challenging legality of the order by which he was dismissed from service. On failure of conciliation proceedings, the dispute was referred to the Labour Court No.2, Vadodara, for adjudication, where it was numbered as Reference (LCV) No.397/1980.

5. A statement of claim was submitted by the respondent, to which reply was filed by the petitioner at Exh.12. In order to substantiate his case, the respondent had examined himself at Exh.15; whereas on behalf of the petitioner, Mr.Girishbhai Jashbhai Patel was examined at Exh.52 and Mr. Pravinbhai Mohanlal Tripathi was examined at Exh.54. From the record of the case, it is evident that further evidence of the respondent was recorded before the Labour Court at Exh.43. On appreciation of evidence produced by the parties, the Labour Court held that it was not proved by the petitioner satisfactorily that witness Girishbhai Jashbhai Patel was a witness to the act of taking out of petrol from the tanker or tanker catching fire. The Labour Court noticed that the respondent, who was the Cleaner, was not in overall control of the tanker and could not have prevented the driver from stopping the tanker on way to Cambay. On appreciation of evidence of witness Pravinbhai Mohanlal Tripathi, the Labour Court deduced that it was not the case of the petitioner that the respondent was holding lantern in his hands and that the third person, who had received burn injuries, was not examined as a witness rendering the case of the petitioner against the respondent doubtful. In view of the above-referred to conclusions, the Labour Court held that it was not proved by the petitioner that the respondent as Cleaner was negligent in performance of his

duties nor the intention on his part to commit theft of petrol was established, as a result of which the respondent was entitled to be reinstated in service. It was also noticed by the Labour Court that during the interregnum period the respondent was not gainfully employed and that he was entitled to 50% back wages. In the ultimate result, the Labour Court by the impugned order and award has directed the petitioner to reinstate the respondent in service with 50% back wages, giving rise to the present petition.

6. The petition was placed for admission hearing before the Division Bench on December 30, 1988, and after hearing the learned counsel for the petitioner, rule was issued and ad-interim stay as prayed for in Paragraph XII (iii)(b) was granted. It may be stated that in Paragraph XII (iii)(b) of the petition, the petitioner had prayed to stay implementation and operation of the Award impugned in the petition. However, subsequently by an order dated March 14, 1990, stay of operation of Award of the Labour Court was continued subject to compliance of the provisions of Section 17-B of the Industrial Disputes Act, 1947 by the petitioner.

7. I have heard the learned counsel for the parties, at length and in detail, and considered R.& P. of the case received by this Court pursuant to order dated January 17, 2003. It would be relevant to notice at this stage that challenge to legality of inquiry held by the Inquiry Officer against the respondent was given-up by the respondent vide purshis Exh.42 submitted on July 1, 1986. In view of the decision of the Supreme Court in The Workmen of M/s. Firestone Tyre and Rubber Company of India (Pvt.) Ltd. v. The Management and others, (1973)1 SCC 813, there is no manner of doubt that under Section 11-A of the Industrial Disputes Act, 1947, the Tribunal is clothed with powers to reappreciate the evidence and satisfy itself whether the evidence establishes the misconduct. However, it is found that the respondent in his deposition has merely made a bald statement that the fire had taken place accidently. In his deposition before the Labour Court, the respondent has not explained as to how the third person i.e.Chimanbhai had received burn injuries and died, or how he was able to save himself when the fire had taken place. The respondent has not uttered a word in his deposition before the Labour Court that Mr.Girishbhai Jashbhai Patel was not a witness to the incident, nor has offered any explanation as to why Mr.Girishbhai Jashbhai Patel was deposing against him. Further, the claim advanced by witness Girishbhai Jashbhai Patel that in his presence officer of

the Company i.e. Pravinbhai Mohanlal Tripathi had come to the place of incident and recorded statements of the driver and the respondent, wherein the respondent had admitted his guilt, has totally gone unchallenged. Moreover, witness Pravinbhai Mohanlal Tripathi, who is examined at Exh.54, has also stated in his deposition that on receipt of information about the incident, he had gone to the place of incident and recorded the statements of the driver as well as that of the respondent, and that the respondent had admitted before him that the fire had taken place because of lantern. This part of evidence of Mr. Tripathi is also not challenged on behalf of the respondent, though Mr.Tripathi was cross-examined on other aspects at length. In view of the above state of affairs, the Labour Court could not have arbitrarily brushed aside the deposition of witness Girishbhai Jashbhai Patel on the ground that he was not a witness to the incident, as he had failed to produce cinema ticket, nor the evidence of Pravinbhai Mohanlal Tripathi could have been discarded on untenable and flimsy ground. The appreciation of evidence by the Labour Court of the witnesses examined before it, to say the least, is perverse and done in such a manner that it creates an impression that the appreciation of evidence is made by a lay man and not by a person trained in law. The finding, therefore, recorded by the Labour Court to the effect that the petitioner has failed to establish that the respondent was negligent in performance of his duties as Cleaner or that his intention was not to commit theft of petrol, is liable to be set aside. In my view, the evidence of witness Girishbhai Jashbhai Patel and that of witness Pravinbhai Mohanlal Tripathi establishes beyond preponderance of probabilities that the respondent and the driver had permitted deceased Chimanbhai to sit in cabin of the tanker and had stopped the tanker near the depot of the contractor, who had employed Chimanbhai and that while taking out petrol from the tanker, fire had taken place because of lantern which was held by Chimanbhai, resulting into his death and complete destruction of the tanker. The evidence clearly establishes that the respondent was not only negligent in performing his duties as a Cleaner, but, was active party in dishonestly extracting petrol from tanker. Thus, the charge of gross negligence and dishonesty, resulting into total loss to the petitioner's property and product due to fire that had taken place to tanker lorry No.GTK-4036 on September 26/27, 1979, stands established. Normally, the High Court in a petition under Article 227 would not interfere with the finding of facts recorded by the Labour Court nor reappreciate the evidence led before the Labour Court because the High Court is exercising

supervisory and limited jurisdiction under Article 227. However, as noticed earlier, the Labour Court has recorded perverse finding of facts ignoring most material parts of the depositions of the witnesses examined on behalf the petitioner and also that of the respondent, and this erroneous approach in law to the appreciation of material facts has vitiated the findings arrived at by the Labour Court, which has caused failure of justice. There has been a flagrant abuse of elementary principles of justice, and the errors committed by the Labour Court while holding that the charges levelled against the respondent are not proved, are manifest as well as apparent on the face of the record, and if not corrected, would result into not only miscarriage of justice, but, would send wrong signals to other such employees employed by the petitioner. Therefore, the petition will have to be allowed and order of dismissal from service passed against the petitioner will have to be restored.

For the foregoing reasons, the petition succeeds.

The order and award dated September 27, 1988, rendered by the Labour Court No.2, Vadodara, in Reference (LCV) No.397/1980, is hereby quashed. The said Reference stands dismissed. Rule is made absolute. There shall be no order as to costs all throughout. The interim relief granted earlier is hereby vacated.

(J.M.Panchal,J.)

(patel)